

Law and the Lawyers, by Edward S. Robinson

Vernon X. Miller

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Vernon X. Miller, *Law and the Lawyers*, by Edward S. Robinson, 20 Marq. L. Rev. 112 (1936).
Available at: <http://scholarship.law.marquette.edu/mulr/vol20/iss2/13>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

BOOK REVIEW

Law and the Lawyers, by Edward S. Robinson. The Macmillan Company, New York, 1935. 348 Pages.

In this little book Professor Robinson has intended to arouse "lawmen"¹ to self-criticism. And he has disturbed at least one reputable lawman to react in a kind of impersonal self-defense.² Everyone "learned in the law" will find himself responding violently in one way or another to the author's frequently brilliant and incisive critical appraisals of the law in action. It is difficult for this particular lawman, this reviewer, to feel satisfied that he has followed the development of Professor Robinson's theses chapter by chapter, but he must confess that he likes many of the author's comments and that he does feel that most of the time he belongs on Professor Robinson's side.

Perhaps it is the experience of most readers, who peruse this book with a review on their minds, that they find themselves challenged to set out what they, too, think is wrong with the judicial process. The author contends that the language of the law is artificial, and that this artificiality of language makes difficult the task of analyzing policy choices of judges and the factors that have influenced those policy choices. And those of us who feel that we are on Professor Robinson's side immediately want to express these as our own opinions about the traditional language technic of the law. His comments on sophisticated and unsophisticated judges, who "disguise a complex clash of human interests as a neat problem of syllogistic logic,"³ please us immensely. And what he has to say about breaking down adjectives that we may appreciate when a particular adjective is factually descriptive and when it is descriptive of a "legal" category is the sort of thing that many of us have been thinking about at least.⁴

Perhaps those of us who feel so positively about these shortcomings of the traditional and figurative language technic of our profession begin to get the crusading spirit when we expound our criticisms. Certainly Professor Robinson has used strong language in criticising the American Law Institute and the Restatements—and his strong language has already moved some lawmen to protest.⁵

But it is not only with the language of the law that the author is concerned. The ideas behind the language he contends are most important. He purports to be preparing his readers for an understanding of "naturalistic" jurisprudence, which means, apparently, a judicial process working through men who are that self-critical as to appreciate objectively the precise factors affecting the policy choices which they are making as judges, legislators, or administrative officials. And these natural influences should be and are "real" facts untainted by any ideals or ideas of traditional morality. It is at this point that this reviewer, who pretends to have followed Professor Robinson's criticisms, begins to feel critical himself.

Law and the lawyers have much to answer for. The language of the law is outmoded. A realistic analysis of the law in action discloses that human judgment is the all important factor in the functioning of the judicial process, judg-

¹ This word "lawman" is original, I believe, with Professor Robinson. It is used frequently in the first four chapters of his book.

² Morgan, Book Review, (1936) 13 N. Y. U. L. Q. Rev. 322.

³ Page 205.

⁴ See page 130.

⁵ Goodrich, *Institute Bards and Yale Reviewers*, (1936) 84 U. of PA. L. Rev. 449.

ment of men on the bench, in the jury box, and in the legislature. Human beings are making policy choices every day which are affecting the lives of all their fellow men. There is no governmental device which can ever be planned to work automatically. We can never have a government of laws in that sense. We must always cope with the factor of human judgment whatever may be the political scheme which we have devised or acquired and under which we regulate our living together with our fellow men in the same community. The most we can hope for is that the individuals in positions of power, who are making these policy choices, may be subjected to political control and to the restraints of conscience, or to the latter alone in some or many instances if we are satisfied with any sort of political scheme short of a complete democracy.

The judges on the bench, and the jurors, are impartial so far as their interests in a particular controversy are concerned. They cannot escape from their prejudices. But a realist must protest that these persons are not automatons. They do not act involuntarily. They are human beings. They do have cultural ideas about right and wrong which, whether every lawman likes it or not, are more often traditionally Christian than otherwise. These men do try to bring about what they think ought to be. The "naturalistic" critic, to use the author's phrase, must protest against the justifying of these choices as logical deductions from stereotyped legal formulas—but, if he is a realist, the critic must be aware that these choosings are evident of conscience in action. And if Professor Robinson is not willing to go that far in his realistic analyses, as he apparently is not, then this reviewer feels that Professor Robinson and he are not always on the same side.

VERNON X. MILLER.